



JAMES D. MACPHEE  
*Chairman*  
SALVATORE MARRANCA  
*Chairman-Elect*  
JEFFREY L. GERHART  
*Vice Chairman*  
JACK A. HARTINGS  
*Treasurer*  
WAYNE A. COTTLE  
*Secretary*  
R. MICHAEL MENZIES SR.  
*Immediate Past Chairman*

CAMDEN R. FINE  
President and CEO

January 3, 2010

***By electronic deliver to:***

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
*Attention: Docket No. R-1393*

Re: Proposed Rule to Clarify Regulation Z (Truth in Lending Act)  
Provisions on the Credit Card Accountability Responsibility and Disclosure  
Act of 2009 [Docket No. R-1393]

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on the Federal Reserve's proposed rule to clarify provisions of Regulation Z which implements the Truth in Lending Act (TILA). In this proposed rule, the Federal Reserve is providing clarification regarding compliance with certain aspects of the regulations that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act).<sup>2</sup>

---

<sup>1</sup> *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

*With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

<sup>2</sup> Pub. Law 111-24, 123 Stat. 1734 (2009).

## **Background**

The Credit Card Act was signed into law on May 22, 2009. This law primarily amended TILA and established many new substantive and disclosure requirements pertaining to open-end consumer credit plans. The Federal Reserve published regulatory changes to Regulation Z to implement the provisions of the Credit Card Act in three stages. All of these regulatory proposals have been finalized by the Federal Reserve. Since publication of the February 2010 and June 2010 final rules to implement the Credit Card Act, the Federal Reserve has become aware that clarification is needed regarding how financial institutions will comply with some of the rules. These proposed regulatory amendments are intended to clarify the previous provisions that have provided confusion.

## **Ability to Pay Requirement**

In particular, the Federal Reserve proposes a clarification to the credit card provisions of Regulation Z regarding the consumer's ability to pay. Section 226.51 implements the provisions of the Credit Card Act that require creditors to assess a consumer's ability to pay before opening a new credit card account or increasing the credit limit on an existing account. Currently, § 226.51 requires that creditors establish and maintain reasonable written policies and procedures to consider the income or assets and the current obligations of all consumers. For all consumers, a creditor must consider either the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations. Section 226.51 states it would be unreasonable for a creditor not to review information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have income or assets.

Some creditors request on application forms that applicants provide their "income," whereas other creditors request that applicants provide their "household income." The Federal Reserve proposes that creditors only consider the "consumer's independent" ability to make required minimum payments in determining their ability to pay, as well as their "independent" assets and current obligations. The Commentary further clarifies that "when a consumer's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the consumer an ownership interest in the spouse's income or assets."<sup>3</sup>

---

<sup>3</sup> See 75 FR 67501.

## **ICBA's Comments**

ICBA opposes this proposed amendment to Regulation Z regarding a consumer's ability to pay for the reasons expressed below.

Particularly, ICBA opposes this amendment because of the implications it would have for individuals over the age of 21 who may have a household income but not an independent income. One example would be a stay-at-home spouse who is part of a household but does not have an income independent of his or her working spouse. Many households consist of individuals who have vastly different individual incomes, but both individuals contribute to the household's duties and responsibilities. This is not an unusual makeup of a household. This proposed rule, however, would limit the lesser earning spouse from independently obtaining credit because he or she may not have a sufficient income independent from their spouse. Such a requirement seems to ignore the way many households operate in the United States, and would ironically further limit access to credit at a time when consumers need it the most.

Furthermore, this type of underwriting could have a discriminatory impact on some individuals, particularly women, who are more likely to be the stay-at-home spouse in a one income family. As a result, this requirement is inconsistent with the goals of the Equal Credit Opportunity Act (ECOA) and Regulation B which provides that creditors not "discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction." 12 CFR 202.4(a). While the Federal Reserve states in the Supplementary Information that a consumer without independent income could still open a credit card account by applying jointly with a spouse or household member who has sufficient income or assets, ICBA asks the Federal Reserve to consider that ECOA has sought to address the situations of the past in which non-working women could not get a credit card or loan unless their spouse was a joint accountholder. This proposed Regulation Z amendment would contradict ECOA's intent.

In addition, the change to Regulation Z is a substantive amendment and not a technical amendment as stated by the Federal Reserve. This change would have a tremendous impact on community banks and the consumers they serve because it would limit their customer base to only household members or spouses that are the primary financial earners, unless the consumer elects to make a joint application. If the Federal Reserve wishes to propose such a major regulatory change, then it should provide a greater amount of time for the public to provide their comments and should also conduct consumer testing and industry outreach across the country to validate through data that such a change is in the best interest of consumers and the credit card industry. Now is not the time for the Federal Reserve to be making major changes to the credit card provisions of Regulation Z without sufficient data to bolster its reasoning.

Finally, this amendment to Regulation Z is not consistent with the provisions of the Credit Card Act, which only had an “independent” ability requirement for consumers under age 21. If Congress wanted to include an “independent” ability to pay requirement for all individuals, it would have done so. ICBA urges the Federal Reserve to remain as consistent with the Credit Card Act as possible and to not include additional regulatory requirements for credit cards that are not expressly required by statute.

The Consumer Financial Protection Bureau (CFPB) will assume rulewriting authority over Regulation Z in July 2011, and Elizabeth Warren, assistant to the President regarding the CFPB, has made statements that the Bureau will begin its duties by examining products such as credit cards and credit card disclosures. Since the Bureau has confirmed it will soon be reexamining Regulation Z’s credit card rules, ICBA asks that the Federal Reserve forego making substantive amendments regarding the credit card provisions that could potentially be reexamined and changed again once the Bureau assumes rulewriting authority over Regulation Z. The Federal Reserve and the CFPB should coordinate on these issues until the transfer of authority to the CFPB is effective.

Based on the reasons stated above, ICBA urges the Federal Reserve to withdraw this proposed change regarding ability to pay and to clarify in Regulation Z that creditors may consider either individual or household income when satisfying the ability to pay requirements of the Credit Card Act.

ICBA thanks the Federal Reserve for the opportunity to comment on this proposed rule. As you are aware, community banks are common sense lenders that offer credit cards and other credit products on fair terms as a means of providing valuable services to their customers. As you review these and other Regulation Z provisions, please remember that community banks have not engaged in the misleading practices conducted by some of the larger financial institutions that are the impetus for the recent consumer credit laws and agency rulemakings.

If you have questions about this letter or need additional information, please do not hesitate to contact me at 202-659-8111 or [Elizabeth.Eurgubian@icba.org](mailto:Elizabeth.Eurgubian@icba.org). In addition, ICBA would be happy to meet with Federal Reserve staff to discuss these comments in further detail and provide additional insight from the community bank perspective.

Sincerely,

/s/

Elizabeth A. Eurgubian  
Vice President & Regulatory Counsel